

SENATE No. 1444

The Commonwealth of Massachusetts

PRESENTED BY:

Marc R. Pacheco

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act authorizing a governmental body to enter into contracts for the operation, maintenance, operation and maintenance, lease or sale and modification of water storage facilities , water treatment facilities and wastewater treatment facilities, collection and distribution systems, sewers and pump stations.

PETITION OF:

NAME:

Marc R. Pacheco

DISTRICT/ADDRESS:

First Plymouth and Bristol

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01896 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT AUTHORIZING A GOVERNMENTAL BODY TO ENTER INTO CONTRACTS FOR THE OPERATION, MAINTENANCE, OPERATION AND MAINTENANCE, LEASE OR SALE AND MODIFICATION OF WATER STORAGE FACILITIES, WATER TREATMENT FACILITIES AND WASTEWATER TREATMENT FACILITIES, COLLECTION AND DISTRIBUTION SYSTEMS, SEWERS AND PUMP STATIONS

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. For the purposes of this act, the term "governmental body" shall be defined as any
2 city, town, county, water district, wastewater district, authority or state agency located within the
3 commonwealth; provided further that the term "governmental body" shall not mean the Massachusetts
4 Water Resources Authority (MWRA).

5 SECTION 2. Chapter 40 of the General Laws is hereby amended by adding the following twelve
6 sections:

7 Section 60. Notwithstanding any general or special law to the contrary, any governmental body that
8 accepts the provisions of this section and sections sixty-one through sixty-eight, inclusive, may in
9 accordance with the provisions of this chapter,

10 enter into a contract for the lease or sale, operation, maintenance or operation and maintenance, financing,
11 permitting, design and construction of modifications, and new facilities, and installation of new
12 equipment and systems, or any combination thereof, necessary for water storage facilities, water
13 treatment facilities, wastewater treatment facilities, septage treatment facilities, sewer and pump stations,
14 collection and distribution systems, to ensure adequate services and to ensure the ability of water storage
15 facilities, water treatment facilities, septage treatment facilities, wastewater treatment facilities, sewers
16 and pump stations, collection and distribution systems to operate in full compliance with all applicable

17 requirements of federal, state and local law. Said contract shall be awarded pursuant to the provisions of
18 chapter thirty B except for paragraph (3) of subsection (b), paragraph (3) of subsection (e), subsection (g)
19 of section six and sections thirteen and sixteen.

20 The request for proposals for such contract shall specify the method for comparing proposals to
21 determine the proposal offering the most advantageous proposal to a governmental body including, but
22 not limited to, all capital financing, operating and maintenance costs, warranty requirements, indemnity
23 and security, experience and technical competence. If a contract is awarded to an offeror who
24 submitted the most advantageous proposal, but who did not offer the lowest overall cost, the
25 governmental body shall explain the reason for the award in writing. The contract shall provide that all
26 necessary construction of modifications, and new facilities, and installation of new equipment and
27 systems, performed after the initial capital repairs, alterations or improvements that are awarded pursuant
28 to this section, which are estimated to cost more than two hundred and fifty thousand dollars shall be
29 awarded according to the provisions of chapter one hundred forty-nine, sections 44A, 44B, 44C, 44E (but
30 not including modular buildings), 44F, 44G and 44H, if the contractor employs a general contractor, or
31 chapter one hundred forty-nine, sections 44B, 44C, 44E, 44F, 44G, and 44H, if the contractor acts as a
32 construction manager and contracts with subcontractors to perform the construction work. The
33 governmental body may, with advice from the contractor and the engineer employed pursuant to section
34 67, pre-qualify general contractors and subcontractors who may submit bids and sub-bids for each such
35 construction contract. The specifications for such work shall contain certification by the qualified water
36 and wastewater engineer employed pursuant to this section that he has independently assessed the need
37 for such capital improvements, renovation, modernization, installation or replacement work and that he
38 has reviewed and approved the contractor's proposed plans and specifications prior to advertising for bids
39 and sub-bids.

40 Section 61. (a) Notwithstanding the provisions of any general or special law to the contrary, a contract
41 or contracts awarded pursuant to section sixty may provide for a term, not exceeding twenty years, and an
42 option for renewal or extension of operation, maintenance or operation and maintenance services for one
43 additional term not exceeding ten years in accordance with the terms of the original contract. A contract
44 entered into pursuant to section sixty to seventy-one, inclusive, may provide that the governmental body
45 shall not be exempt from liability for payment of the costs to operate, maintain, finance, permit, design
46 and construct, modify or install new equipment and systems at any water storage facilities, water
47 treatment facilities, wastewater treatment facilities, septage treatment facilities, collection and distribution
48 facilities, sewers and pump stations necessary to ensure the ability of said facilities, to operate in full
49 compliance with all applicable requirements of federal, state and local law, provided that such costs shall
50 be amortized over a period that is no longer than the useful life of said modifications, equipment and
51 systems. A governmental body's payment obligation for all operation, maintenance or operation and

52 maintenance services shall be conditioned on the contractor's performance of said services in accordance
53 with all contractual terms.

54 (b) Any contract entered into pursuant to sections sixty to seventy-one, inclusive, may provide for
55 such activities deemed necessary to carry out the purposes authorized herein, including, but not limited to,
56 financing, facility or land sale or lease, equipment installation and replacement, performance testing and
57 operation, studies, permitting, design and engineering work, construction work, ordinary repairs and
58 maintenance, and the furnishing of all related material, supplies and services required for the water
59 storage facilities, water treatment facilities and wastewater treatment facilities, septage treatment
60 facilities, collection and distribution systems, sewer and pump stations and the management, construction,
61 operation, maintenance and repair of and improvements to said facilities.

62 Section 62. The chief procurement officer of a governmental body shall solicit proposals through a
63 request for proposals which shall include those items in paragraphs (1) and (2) of subsection (b) of section
64 six of chapter thirty B and proposed key contractual terms and conditions to be incorporated into the
65 contract, some of which may be deemed mandatory or non-negotiable; provided, however, that the
66 request for proposals may request proposals or offer options for fulfillment of other contractual terms, and
67 such other matters as may be determined by the governmental body.

68 Section 63. The chief procurement officer of a governmental body shall make a preliminary
69 determination of the most advantageous proposal from a responsible and responsive offeror taking into
70 consideration price, estimated life-cycle costs, allocation of risks and responsibilities and other
71 evaluation criteria set forth in the request for proposal. The chief procurement officer may negotiate all
72 terms of the contract not deemed mandatory or non-negotiable with such offeror. If, after negotiation with
73 such offeror, the chief procurement officer determines that it is in the governmental body's best interests
74 to terminate negotiations with said offeror, the chief procurement officer shall notify said offeror in
75 writing that negotiations are terminated and shall enter into negotiations with the next most advantageous
76 proposal from a responsible and responsive offeror taking into consideration price, estimated life cycle
77 costs, allocation of risks and responsibilities and other evaluation criteria set forth in the request for
78 proposals, and may negotiate all terms of the contract not deemed mandatory or non-negotiable with such
79 offeror. The chief procurement officer shall award the contract to the most advantageous proposal from a
80 responsible and responsive offeror taking into consideration price, estimated life cycle costs, allocations
81 of risks and responsibilities and other evaluation criteria set forth in the request for proposal and the terms
82 of the negotiated contract. Subject to the approval of the governmental body, the chief procurement
83 officer shall award the contract by written notice to the selected offeror within the time for acceptance
84 specified in the request for proposals. Such award shall be subject to this section and sections sixty to
85 sixty-two and sections sixty-four to seventy-one, inclusive. The parties may extend the time for
86 acceptance by mutual agreement.

87 Section 64. Notwithstanding any other provisions of this act, it shall be a mandatory term of any
88 request for proposal issued by a governmental body and of any contract entered into by a governmental
89 body with any party for operations and maintenance that any party that has entered into a contract pursuant
90 to the terms of this act with a governmental body, shall require, in order to maintain stable and productive
91 labor relations and to avoid interruption of the operation of the facility and to preserve the health, safety
92 and environmental conditions of residents

93 of a city or town and surrounding communities, any and all employees working on the operation and
94 maintenance of the water storage and treatment facilities, wastewater treatment facilities, septage
95 treatment facilities, collection and distribution facilities, sewers and pump stations that exist at the time of
96 execution of the contract entered into pursuant to the provisions of this act, be offered employment by
97 any party entering into a contract with a governmental body for the operation and maintenance of said
98 facilities, and furthermore, said party entering into a contract with a governmental body, shall adopt all
99 terms and conditions of employment provided by the last applicable labor agreement negotiated between
100 the labor organization representing said employees and the applicable employer who has most recently
101 employed said employees prior to entering into any contract pursuant to this section, and sections sixty to
102 sixty-three and sections sixty-five to seventy-one, inclusive. Moreover, said parties shall furthermore
103 agree to meet its legal obligations with regard to any labor organization representing employees engaged
104 in the operation and maintenance of the water treatment facilities, wastewater treatment facilities,
105 septage treatment facilities, collection and distribution facilities, sewers and pump stations described
106 herein. Notwithstanding any other provisions of sections sixty to seventy-one, inclusive, any proposal or
107 contract for this purpose and not complying with the above terms, shall be disqualified from
108 consideration. The provisions of this section shall not apply where one or more full-time public
109 employees are not displaced from employment as a result of the contract entered into pursuant to Sections
110 60-71. The provisions of this section shall not apply to water storage facilities.

111 Section 65. Subject to the provisions of this section and section sixty to sixty-four and sections sixty-
112 six to seventy-one inclusive, any contract awarded pursuant thereto shall be subject to such terms and
113 conditions as the governmental city or town shall determine to be in the best interests of said
114 governmental body. Any such contract shall provide that prior to the construction of modifications or
115 installation of equipment and systems for water treatment facilities, wastewater treatment facilities,
116 septage treatment facilities, collection and distribution facilities, sewers and pump stations the
117 governmental body shall cause a qualified water and wastewater engineer to independently review and
118 approve plans and specifications for said modifications, equipment or systems.

119 Section 66. Notwithstanding the provisions of any general or special law or regulation to the contrary,
120 the Department of Environmental Protection may issue project approval certificates with respect to the
121 contract procured by a governmental body for water storage facilities, wastewater treatment facilities,

wastewater treatment facilities, septage treatment facilities, collection and distribution systems, sewers and pump stations. Any design and construction services included in such contract and any design and construction services procured in accordance with the provisions of this act shall not be precluded from eligibility for assistance under the Massachusetts Water Pollution Abatement Trust established by section two of the chapter twenty-nine C.

Section 67. The provisions of any general or special law or special act or regulation relating to the advertising, bidding or award of contracts, the procurement of services or to the construction and design of improvements, shall not be applicable to any selected offeror which is awarded a contract pursuant to sections sixty to seventy-one, inclusive, except as provided in this section, provided further, however, that the provisions of sections twenty-six to twenty-seven F, inclusive, and section twenty-nine of chapter one hundred forty-nine shall apply. Any such contract which requires the construction of any new capital improvements for any renovation, modernization, installation or replacement work estimated by an engineer experienced and qualified for the design and inspection of the construction of such work to cost more than two hundred and fifty thousand dollars shall require the contractor to prepare complete plans and specifications for the work, take bids from general contractors and subcontractors or to act as construction manager and take sub-bids from subcontractors and to award contracts and subcontracts for the work as provided in section sixty. Any contract or contracts awarded pursuant to this section and sections sixty to sixty-six, and sixty-eight through seventy-one, inclusive, shall provide that in the event that the governmental body does not approve the contractor's proposed plans and specifications pursuant to this section, the governmental body or the contractor may terminate said contract under the terms and conditions of said contract. The provisions of this section shall not apply to water treatment facilities.

Section 68. An action, suit or proceeding contesting the validity or enforceability of a contract or contracts awarded pursuant to this act, or the compliance by the governmental body with the procedures relating to such award, shall be commenced within thirty days after publication of notice of such award by the chief procurement officer in a newspaper of general circulation according to the location of the government body.

Section 69. Notwithstanding the provisions of chapter thirty-two of the General Laws or any other general or special law to the contrary, any governmental body which adopts the provisions of this act shall provide for an early retirement incentive program as set forth for any employees working on the operation and maintenance of the water treatment facilities, wastewater treatment facilities, septage treatment facilities, sewer and pump stations, collection and distribution systems, who (i) shall be an employee and an active member-in-service of the local retirement system established under said chapter thirty-two or any predecessor system on the date that the city or town enters into said contract, (ii) shall be eligible to receive a superannuation retirement allowance in accordance with the provisions of subdivision (1) of section five of said chapter thirty-two or subdivision (1) of section ten of said chapter thirty-two upon the

effective retirement date specified in a written application to the local retirement board, and (iii) shall have filed a written application to retire for superannuation as of the date which shall be specified in such application. The early retirement incentive program shall be administered by the local retirement board, which shall be authorized to promulgate regulations necessary to implement the provisions of said program. Notwithstanding the provisions of chapter thirty-two of the General Laws to the contrary, the normal yearly amount of the retirement allowance for an eligible employee who is employed by the city or town and who has paid the full amount of regular deductions on the total amount of regular compensation so determined under paragraph (a) of subdivision (2) of section five of said chapter thirty-two shall be based on the average annual rate of regular compensation as determined under said paragraph (a) and shall be computed according to the table contained in said paragraph (a) based on the age of such member and his number of years and full months of creditable service at the time of his retirement increased by up to five years of age or by up to five years of creditable service or by a combination of additional years of age and service, the sum of which shall not be greater than five. For the purpose of this act, words shall have the same meaning as in said chapter thirty-two of the General Laws unless otherwise expressly provided or unless the context clearly requires otherwise. An employee who retires and receives an additional benefit in accordance with the provisions of this act shall be deemed to be retired for superannuation under the provisions of said chapter thirty-two and shall be subject to any and all provisions of said chapter thirty-two. The total normal yearly amount of the retirement allowance, as determined in accordance with the provisions of section five of said chapter thirty-two of the General Laws, of any employee who retires and receives an additional benefit under the retirement incentive program in accordance with the provisions of this act shall not exceed such percentage of the average annual rate of his regular compensation received during any period of three consecutive years of creditable service for which the rate of compensation was the highest or of the average annual rate for his regular compensation received during the periods, whether or not consecutive, constituting his last three years of creditable service preceding retirement, whichever is greater. The local retirement board shall prepare a funding schedule which shall reflect the costs and the actuarial liabilities attributable to the additional benefits payable under the retirement incentive program in accordance with the provisions of this act and such schedule shall be designed to reduce the additional pension liability attributable to such costs and liabilities to zero on or before June thirtieth, two thousand and seventeen; provided however, that said board shall triennially update such schedule until said June thirtieth, two thousand and seventeen. In each of the fiscal years until the actuarial liability determined under this section shall be reduced to zero, it shall be deemed an obligation of the county to fund such liability and there shall be appropriated in each such fiscal year the amount required by the funding schedule and the updates thereto. The provisions of this section shall not apply where one or more full-time public employees are not displaced from employment as a result of the contract entered into pursuant to Sections 60-71.

Section 70. It shall be a mandatory requirement that no less than ninety days prior to the commencement of any procurement process undertaken pursuant to the provisions of sections sixty-one to seventy-one for the design, construction, operation, maintenance or operation and maintenance, leasing, sale, or modification for work on the water treatment facilities, wastewater treatment facilities, septage treatment facilities, sewer and pump stations, collection and distribution systems, that the governmental body shall make public notification of said process by the following means:

1. Publish an appropriate notice to the Central Register, published by the Secretary of State.
2. Inform the collective bargaining agent representing employees of said facility (ies) or station(s) .

Section 71. Notwithstanding any general or special law to the contrary, any contract issued pursuant to this section or pursuant to a contract previously awarded under this section that provides for the construction, reconstruction, alteration or modification of water treatment facilities, wastewater treatment facilities, septage treatment facilities, collection and distribution systems, sewers and pump stations shall include, as a minimum, the following language:

(1) A private entity engaged in a construction, development, renovation, remodeling, reconstruction, rehabilitation or redevelopment project pursuant to a contract awarded under this act shall properly classify individuals employed on the project and shall comply with all laws relative to workers' compensation, unemployment insurance, social security taxes and income taxes with respect to those employees.

(2) All construction contractors or subcontractors engaged by any entity on any project which is performed pursuant to a contract awarded under this act shall have and maintain participation in a bona fide apprentice training program as defined by M.G.L. c.23, §11H and 11I for each category of work represented in their workforce that is approved by the Division of Apprentice Training of the Department of Labor and Workforce Development and abide by the apprentice to journeyman ratio for each trade.

(3) All construction contractors engaged by any entity on any project that is performed pursuant to a contract awarded under this act shall furnish, to the awarding authority, documentation showing all employees are employed on the project have hospitalization and medical benefits that meet the minimum requirements of the Connector Board established by Chapter 58 of the Acts of 2006.

Section 72. Notwithstanding any general or special law to the contrary, sections sixty through seventy-one inclusive of this chapter may be accepted, in the case of a city with a Plan D or Plan E charter by the city council, with the approval of the mayor; in the case of a town with a town council, by the town council; in the case of all other towns, by the Board of Selectmen, in the case of an existing water and sewer commission, by its board of commissioners.

SECTION 3. This act will take effect upon passage.